

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

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)
Policies and Rules Governing)
Interstate Pay-Per-Call and Other)
Information Services Pursuant to)
the Telecommunications Act of 1996)

CC Docket No. 96-146

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GTE's COMMENTS

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TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	ii
BACKGROUND	1
DISCUSSION	2
1. GTE welcomes these Congressional and FCC initiatives; urges the Commission to continue to be vigilant in closing loopholes; and suggests the FCC should adopt a reasonable assumption that would promote exchange carrier action terminating agreements with deceptive and abusive parties	2
2. The FCC should continue holding IXCs and IPs responsible for abusive behavior, and should not seek to place responsibility on exchange carriers for matters they cannot control	4
3. The IP/IXC should be required to furnish as part of billing information the toll-free number dialed for billing purposes; and to furnish a message or account indicator certifying that it has a presubscription agreement	5
4. GTE once again urges the FCC to adopt a simple and inexpensive procedure for handling complaints that will permit a dramatic improvement in the industry's responsiveness	6

SUMMARY

1. GTE urges the Commission to continue to be vigilant in closing loopholes; and suggests the FCC should adopt a reasonable assumption that would promote exchange carrier action terminating agreements with deceptive and abusive parties.

2. GTE suggests the FCC should continue holding IXC's and IP's responsible for abusive behavior, and should not seek to place responsibility on exchange carriers for matters they cannot control.

3. The IP/IXC should be required to furnish as part of billing information any toll-free number dialed for billing purposes; and to furnish a message or account indicator certifying that it has a presubscription agreement.

4. Once again, GTE urges the FCC to adopt a simple and inexpensive procedure for handling complaints that will permit a dramatic improvement in the responsiveness of government and industry.

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GTE's COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"), in response to the Order and Notice of Proposed Rulemaking, FCC 96-289 (released July 11, 1996) (the "*Notice*"), offer the following comments of GTE as a Local Exchange Carrier ("LEC" or "exchange carrier") .

BACKGROUND

In the *Notice*, the FCC amends its rules to conform with the Telecommunications Act of 1996 (the "1996 Act") and proposes to enact new provisions governing interstate Pay-Per-Call ("PPC") services. In 1991, the Commission adopted rules concerned with PPC services to help curb the rampant abuse involving 900 number services.¹ To augment these rules, Congress enacted the Telephone Disclosure and Dispute Resolution Act ("TDDRA") in 1992.² In 1993, the Commission

¹ *Policies and Rules Concerning Interstate 900 Telecommunications Services*, CC Docket No. 91-65, Report and Order, 6 FCC Rcd 6166 (1991), *reconsideration*, 8 FCC Rcd 2343 (1993).

² Even before the passage of the TDDRA, GTE applied sensible policies that permitted end user customers to protect themselves from unwanted charges by blocking access to 900.

further amended the PPC rules.³ On February 8, 1996, the President signed the 1996 Act, which modifies 47 U.S.C. Section 228 to ensure elimination of abuses involving toll-free numbers and compliance with FCC rules and federal law.

GTE does not furnish PPC services. Apart from furnishing tariffed telecommunications services, GTE's only involvement in the interstate PPC business is the provision of Billing and Collection ("B&C") services to, and only to, Interexchange Carriers ("IXCs") that in turn enter into contracts with Information Providers ("IPs").

DISCUSSION

1. **GTE welcomes these Congressional and FCC initiatives; urges the Commission to continue to be vigilant in closing loopholes; and suggests the FCC should adopt a reasonable assumption that would promote exchange carrier action terminating agreements with deceptive and abusive parties.**

GTE stresses that its policy is, and has been for several years, to refuse to bill and collect for any and all interstate PPC calls via anything other than 900. Even so, GTE testifies that efforts of various IXCs, or their customers, or their customers' customers, to circumvent GTE's policy, the Commission's rules and even the federal statute continue to create grave problems for GTE as well as other LECs providing B&C service. Accordingly, GTE welcomes the action of Congress and the Commission's initiatives designed to further protect the public from deceptive and abusive behavior.

The Commission and the industry must be vigilant, and must work together cooperatively, to safeguard the public against this kind of behavior. Conclusive

³ Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, 8 FCC Rcd 6885 (1993).

resolution of the problem has proved elusive because, as soon as one loophole is closed, a new evasion of the clear intent of Congress occurs. For example, the newest evasion appears to entail the end user customer being charged what is characterized as a monthly service fee -- either a Voicemail service fee or a Teleservice fee. The evident theory is that this fee does not come within the "Pay Per Call" definition and thus will avoid the prohibitions of the FCC's rules and the statute. GTE's end user customers, however, complain that they were unaware that this fee is actually a charge for PPC-type services -- indeed, services previously offered as such.

GTE believes this is merely another attempt to circumvent the federal prohibitions. GTE urges the FCC to make clear when adopting its newly modified rules that behavior that amounts to a mere circumvention of the federal prohibition will be subject to all federal requirements.

47 U.S.C. Section 228(c)(7)(A) prohibits the use of toll-free numbers "in a manner that would result in the calling party being assessed, by virtue of completing the call, a charge for the call." In Paragraph 45 of the *Notice*, the Commission's tentative conclusion is that it is a violation of 47 U.S.C. Section 228(c)(7)(A) to rely on ANI in order to bill any type of call to a toll-free number. GTE agrees with this interpretation, and suggests a further step would provide a way to close loopholes that involve deception practiced on the exchange carrier.

A prevalent and endlessly recurring problem is the submission of billing items under false colors, e.g., masquerading as toll calls when in fact they were made via 800 or other toll-free numbers. When deceptive items are sent to GTE, GTE (absent the required account indicator recommended *infra*) will not be able to recognize the

deception until a complaint is filed. Then the filed complaints may expose only a small proportion of the abusive and deceptive items.

Given the prevalence of deception by such "masquerade" submissions, and the difficulty this presents for exchange carriers seeking to comply with the letter and spirit of the rules, the Commission would provide an important assistance and stimulus for LEC action by adopting the following reasonable assumption:

In any case where billing items have been submitted to a LEC under circumstances that indicate deception as to the nature of such items, action taken by the LEC pursuant to 47 U.S.C. Section 228(e)(2) terminating the relevant billing and collection contract shall be presumed to have been taken in good faith.

2. **The FCC should continue holding IXCs and IPs responsible for abusive behavior, and should not seek to place responsibility on exchange carriers for matters they cannot control.**

With respect to interstate PPC, GTE enters into B&C contracts only with IXCs. Indeed, GTE has no contact whatever with the IPs that furnish PPC. These IPs are either the customers of GTE's IXC customers or are still further removed (e.g., customers of the customers of GTE's IXC customers). Wisely, Congress did not make LECs guarantors of the behavior of parties with whom they have no contractual agreement and typically no direct knowledge,⁴ nor has the Commission done so. Appropriately, the statute and the Commission's rules contemplate IXCs being

⁴ In fact, as discussed *infra*, when service problems have arisen, GTE has found it extraordinarily difficult even to communicate with the real parties in interest in IP corporations.

responsible for entering into contracts with their own customers, the IPs, and taking action as required.⁵

3. The IP/IXC should be required to furnish as part of billing information the toll-free number dialed for billing purposes and to furnish a message or account indicator certifying that it has a presubscription agreement.

In the event that a lawful call is made to a toll-free number, it is imperative that the IP/IXC be responsible for making sure the toll-free number that was dialed is furnished to the B&C carrier. Today, endless confusion of end user customers results from failure to provide this call information. To reduce end user complaints, the FCC or a suitable industry forum should require identification of these calls as part of the billing information furnished by the IXC.

Further, the FCC or a suitable industry forum should require the IP/IXC to provide a message or account indicator certifying that there is a written presubscription agreement that complies with the statute and the Commission's rules. This would enable IXCs and LECs to simply decline to bill and collect for any item that lacks this certification.

But again, the question of deceptive items arises. Here as elsewhere, deception on the part of the IXC and/or the IP should establish the good faith of LEC contract termination under 47 U.S.C. Section 228(e)(2).

⁵ One reason why GTE's policy is to refuse billing items for calling via anything other than 900 is that very often it develops that so-called presubscription agreements are invalid because the signatory is a minor, or the agreement is not with GTE's end user customer but with some other party living at the same address.

Absent these practical safeguards, deceptive practices will continue to bedevil industry and regulation, creating consumer dissatisfaction and animosity.

4. GTE once again urges the FCC to adopt a simple and inexpensive procedure for handling complaints that will permit a dramatic improvement in the industry's responsiveness.

In assuring compliance with the law and the FCC's rules, the most serious difficulty stems from a delay ranging from six months to a year before GTE receives a copy of filed complaints.⁶ If still another deceptive maneuver crops up next week, generating within a short time twenty complaints, or fifty, or a hundred, GTE cannot be confident it will know about this volume for weeks or months or as much as a year. In and of itself, this frustrates the Congressional direction.

GTE has proposed before, and here offers again, a solution that is simple, workable and inexpensive. The FCC (or its contractor) would (i) make a copy of every complaint received by the FCC and promptly mail out the copy to the carrier(s) involved, using for this purpose name/address lists provided by the industry; and (ii) return the original complaint to the proper FCC analyst within a matter of days. This simple procedure would put the parties in the same position as if the FCC had established an enforceable rule that a complaining party must furnish a copy of the complaint to the carrier(s) that is (are) the subject of the complaint.

If this procedure were carried out, there would be a major benefit to the customer in permitting timely resolution of disputes. GTE is confident that, at least insofar as

⁶ With the exception of those complaints filed with the FCC by members of Congress, which are forwarded quickly.

GTE is concerned, by the time the FCC analyst first picks up the file to perform a preliminary examination concerning jurisdiction, *i.e.*, whether the complaint should be addressed to the FCC or state regulatory commissions, or even some other agency like the Federal Trade Commission or its state counterparts, there will be a GTE letter in the hands of the FCC typically showing that the matter has been resolved. In those few cases where there has been no resolution, GTE's letter will spell out the difficulties, enabling the FCC to act promptly. This means the FCC will be able to handle the matter on an exception basis, *i.e.*, would be required to examine closely and take action in only the exceptional cases in which the matter is not already resolved. This will mean not only will the complaints be more promptly handled; there will be a major saving in Commission resources.

The essential point is that GTE is concerned about an unsatisfied customer regardless of jurisdictional aspects. GTE is concerned about any unhappy customer, whether the subject is interstate or intrastate telecommunications, or whether the subject is an unregulated service. In any case, GTE seeks to resolve reasonably and promptly every complaint. This reality makes it unnecessary and self-defeating to delay the start of the process of company action in order to make a jurisdictional determination.

Through the simple and inexpensive procedure recommended by GTE, the Commission will be able to devote its attention to the relative handful of matters that are within the FCC's jurisdiction and where the complaining party has not been reasonably satisfied. This procedure would greatly improve the ability of GTE and other LECs to respond in a timely and effective way to serious problems arising from devious and

unscrupulous IXC's or IP's. For example, it would be likely to furnish much more quickly a solid legal basis for terminating the contract of an abusive party. In other words, this will give the LEC's -- and also IXC's and IP's -- the timely information on complaints that is indispensable to achieving Congressional intent.

In contrast, under current procedures, by the time the exchange carrier has even received a copy of the complaint to start the process of resolving the matter vis-a-vis the complaining party, six months will often have passed. Not surprisingly, complainants are outraged at this extended delay in response—and their outrage is directed at the exchange carrier. This can be avoided by the adoption of a simple and common-sense program of action that would generally eliminate the excessive delay.


GTE urges the FCC to reconsider its procedural approach and adopt the workable plan here once again proposed.

Respectfully submitted,

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